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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION AND OF APARTHEID, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII)

Written statement submitted by International Educational Development, a non-governmental organization on the Roster

The Secretary-General has received the following written statement which is distributed in accordance with Economic and Social Council resolution 1296 (XLIV).

[30 July 1993]

THE SITUATION IN TIBET

Background

1. International Educational Development and our Humanitarian Law Project have addressed the situation of Tibet for a number of years at the Sub-Commission on Prevention of Discrimination and Protection of Minorities and the Commission on Human Rights. In particular, we were pleased to participate in a joint statement included by the Secretary-General in his report (E/CN.4/1992/37) to the forty-eighth session of the Commission on Human Rights in response to Sub-Commission resolution 1991/10, Situation in Tibet. We now

provide this statement showing that (i) Tibet is a sovereign State and should be afforded all the rights of a sovereign State; (ii) China is illegally occupying and governing Tibet and the people of Tibet have the right to self-determination; (iii) the illegal incorporation of Tibet into China automatically invoked humanitarian law, which remains in effect today due to the continued occupation of Tibet; (iv) China is carrying out serious violations of humanitarian and human rights law against Tibet and the Tibetans.

Tibet: A sovereign State

2. IED/HLP has always argued that the true tragedy in Tibet is the loss in 1949 of the sovereignty of Tibet because of the invasion of China and China's subsequent domination of Tibet. The Tibetan people must regain their sovereignty. From our point of view, the well-documented pattern of human rights violations - torture, arbitrary arrest, violations of religious freedoms, discrimination - occur because the illegal occupier attempts to subject the Tibetan people to its colonial yoke. There will be no improvement in the human rights situation until this illegal occupier retreats and Tibet regains sovereignty.

3. Tibet contains more than 2.5 million square kilometres bordering India, Nepal, Burma, Bhutan and China. Until 1949, its 6 million people lived independently with a unique culture, language and society. As an independent State, Tibet had a head of State and a government infrastructure: army, taxation, postal and customs systems (including passports). While at various times in its long history Tibet fell under some Chinese control, especially during the Ching dynasty when a "suzerainty" was declared, Tibet's relative isolation and unique culture prevented its permanent absorption into any of the successive Chinese States and Tibetans have freely exercised self-rule throughout their long history. Certainly, in the twentieth century and at the time of the signing of the Charter of the United Nations, Tibet was "independent" and fully functioned as such. China's claim to Tibet qualifies as a "legal fiction". 1/

China seized independent Tibet by military force

3. In 1949, the People's Liberation Army of the People's Republic of China entered independent Tibet and militarily overran Tibet and its people. Then in 1951, the People's Republic of China completed a forcible political subjugation of Tibet by means of a treaty - The Seventeen Point Agreement for the Peaceful Liberation of Tibet. 2/ Since that time, Tibet has been subjected to domination by the Chinese Government and the Tibetan people have been denied their right to self-determination. 3/ Since that time, the situation in Tibet is governed not only by human rights law provisions but also by the Geneva Conventions of 1949 and other applicable humanitarian law norms.

Humanitarian law context of the situation in Tibet

4. The 1949 entry into Tibet of the military forces of the People's Republic of China is a clear violation of international law. 4/ It also invoked humanitarian law. 5/ Humanitarian law remains in force as long as an

occupying Power remains in control of another State or any of its territory. 6/ This rule is viewed as necessary because in spite of the absence of direct military hostilities, illegally seized territory never can be legally claimed against the wishes of the people and usually is held only by the occupier's military presence. Such is the clear case in Tibet, where Tibetans categorically reject Chinese rule and China has declared martial law and has stationed up to 300,000 - 500,000 Chinese troops in its attempt to hold Tibet. 7/

Violations of humanitarian and human rights law

5. Because of the continuing application of humanitarian law to the situation in Tibet, the violations of human rights carried out by the Chinese occupiers are also violations of humanitarian law. Serious violations are war crimes in international law: torture, rape, summary executions, deportations, and excessive destruction of cultural and personal property. 8/ These violations are common practices of the Chinese regime - a fact already documented beyond dispute.

6. Forcible deportations of Tibetans from Tibet and the importation of large numbers of non-Tibetan people into Tibet to "thin out" the political expression of the Tibetan people or even to convert Tibetans into a "minority" is a particularly insidious practice. 9/ Tibetans themselves refer to this practice as the most serious threat to them and their culture. As stated by the Dalai Lama

> For Tibetans to survive as a people, it is imperative that the population transfer is stopped and Chinese settlers return to China. Otherwise, Tibetans will soon be no more than a tourist attraction and relic of a noble past. 10/

7. The demographic changes in Tibet due to this practice are truly startling. According to 1988 figures of the United States Congressional Research Service, the Chinese then surpassed Tibetans in two areas and nearly equalled Tibetans in seven others. 11/ As the Chinese regime has continued its policies of deportations and importations, it is expected that current figures are even worse.

8. The Chinese regime has motives in addition to weakening the political expression of Tibetans that stimulate the deportations/importation policy - the exploitation of Tibet's mineral, timber and other resources. For example, eastern Tibet alone contained vast forest reserves, 12/ but these are being rapidly destroyed by the Chinese regime. This policy must also be considered in the light of the right of self-determination. 13/

9. IED/HLP urges the Sub-Commission to address the situation in Tibet in the light of the clear state of the law and in conformity with its obligation under that law.

Notes

1/ This term was used by Special Rapporteur of the Sub-Commission, Mr. Hector Gros Espiell, in "The right to self-determination" (E/CN.4/Sub.2/405/Rev.1) to distinguish between situations where a people in question "freely and voluntarily" lived under the legal order of a State from those where the people obviously do not acquiesce (Gros Espiell at p.6). Because the Tibetan people have resisted so strongly any past and recent attempts by China to seize them and their country, China's claim of sovereignty must be viewed as colonial.

2/ Due to the control of the People's Liberation Army over large parts of Tibet and the extreme pressure on Tibetan officials at the time, this treaty should be considered void due to coercion. See the Vienna Convention on the Law of Treaties (1969), art. 52: "A treaty is void if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations."

3/ The Tibetan people clearly meet any test for self-determination - territory; historical self-governance; all cultural, religious, ethnic and linguistic requirements; and perhaps most importantly, the "common desire". The term "common desire" was also used by Mr. Gros Espiell, op. cit. at 9.

4/ Charter of the United Nations, Art. 2, para.4. See Military and paramilitary operations in and around Nicaragua, International Commission of Jurists, 1986, 14, 100-01 (prohibition of the use of force jus cogens) (hereinafter Nicaragua).

5/ Humanitarian law is applied in all situations of conflict. Nicaragua at p.114.

6/ Article 2 of the Geneva Conventions of 1949 provides for the application of Geneva Convention rules in situations of a partial or total occupation of territory of another State. Geneva Conventions of 1949, 75 United Nations Treaty Series 31, 85, 135, 267. The text reads "occupation of a High Contracting Party". Tibet has not formally ratified the Geneva Conventions and is therefore not a high contracting party. However, according to Nicaragua this rule is applicable to Tibet. Nicaragua, at paras. 218-220, citing Corfu Channel, International Commission of Jurists, 1949 4, 22.

7/ The Dalai Lama, "Five Point Peace Plan", 1987.

8/ Fourth Geneva Convention of 1949, 75 United Nations Treaty Series 267, art. 147

9/ In addition to being a grave breach of the Geneva Conventions, forcible transfer can also be a method of genocide. See Convention on the Prevention and Punishment of the Crime of Genocide, 78 United Nations Treaty Series 277, art. II: "Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part[.]" Chinese attempts to destroy Tibetan culture also fall under the concept of

genocide or at least, as members of the Sub-Commission and others have indicated in the past, a crime against humanity. See, B. Whitaker, Report on the question of the prevention and punishment of the crime of genocide (E/CN.4/Sub.2/1985/6) at p.17. The practice of large-scale forcible deportations and importations, since its wide use in the countries of the former Yugoslavia, is becoming increasingly known as "ethnic cleansing".

10/ The Dalai Lama, op. cit.

11/ Report of 3 May 1988 prepared by K.B. Dumbagh.

12/ The Chinese indicate that Tibet has about one half of China's forest reserves. See, e.g. Questions and Answers About China's National Minorities (Ma Yin, ed., New World Press, Beijing, 1985).

13/ See, e.g. the Charter of Economic Rights and Duties of States contained in General Assembly resolution 3281 (XXIX) and General Assembly resolutions 3171 (XXVIII) and 1803 (XVII) concerning permanent sovereignty over natural resources.

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